



# TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

## **Board of Ethics**

Fred Camillo 1<sup>st</sup> Selectman, Ex Officio Member  
Paul A. deBary, Chairman  
Robert V. Sisca, Member  
Robert F. Grele, Secretary  
John Margenot, Member

## **Annual Report of the Board of Ethics**

### **Fiscal Year 2020-2021**

The Board of Ethics is pleased to submit the following report of its activities for the fiscal year ending June 30, 2021. This report is required to be submitted to the Board of Selectmen and the Representative Town Meeting by Section 2.12 (c) of the Greenwich Code of Ethics.

### **Executive Summary**

During the 2020-2021 Fiscal Year, the Board of Ethics received one request for an advisory opinion and three reports concerning possible violations of the Code of Ethics. The request for an advisory opinion was withdrawn by the person submitting the request. A copy of the decisions rendered in response to two of the reports received is attached as Exhibit A. The Board has not yet determined whether the third report meets its guidelines for a complaint that is appropriate to investigate.

The Town's bidding procedures were changed during the 2020-2021 Fiscal Year after a request for an advisory opinion the previous year prompted discussions among the Board, the Department of Purchasing and Administrative Services and the Department of Law. A set of safe harbor guidelines was established to permit members of Town boards, commissions, committees and other agencies to bid on Town contracts without previously receiving an opinion from the Board of Ethics. To implement this safe harbor procedure, the Board adopted a template for a conflict of interest policy that could be used by Town entities. The policy provides for self-reporting and internal review by the entity involved. Town Officers who certify that they are in compliance with the policy are then permitted to bid on Town contracts without obtaining a prior opinion from the Board.

Following its authorization by the RTM in June, the Board established an online system for use by Town Officers in reporting interests in Town transactions, as required by the Code of Ethics. The Board wishes to thank the Selectmen, the Department of Law,

the moderator of the RTM and the RTM's Town Services and Legislative and Rules Committees for their constructive contributions to this effort. The availability of the new system allowed almost all of the filings for the 2020-2021 Fiscal Year to be made on-line. Significantly, the use of the new on-line filing system appears to have eliminated the numerous errors in filings that were previously experienced, such as filings with nothing to report, unnotarized filings, incomplete filings, etc.

The Board has benefited from the continuation of budgeted funds to support its operations. A significant portion of this budgetary allowance is intended to cover costs that might be necessary in connection with the preliminary investigation of a complaint, should the need arise. Although the Board has never yet required the use of such funds, the continued existence of this budget allocation serves as an important public affirmation that the work of the Board will be supported as necessary. We believe that an increase in this budget allocation would provide further evidence to Town Officers and the public at large that the Board has the necessary means at its disposal to properly address any serious complaint it might receive.

## **Complaints of Violations of the Code**

Three reports concerning violations of the Code were filed with Board of Ethics during the 2020-2021 Fiscal Year. The Board's decisions with regard to two of the reports are attached at Exhibit A. With respect to the third report, the Board's procedures provide that, before it commences a formal investigation, the Board should consider whether a complaint involves issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available. As of June 30, 2021, the Board had not completed its evaluation of this issue.

The Board receives a number of formal and informal reports each year from individuals who express the view that various activities in the Town are unethical. In a number of cases, these activities do not involve Town Officers. In others, they do not involve possible violations of the Town's Code of Ethics or are unclear about, or omit, facts that are essential to be considered in order for the Board to determine whether a preliminary investigation of the matter should be commenced. Because of this, the Board recommends that complainants identify themselves so that the Board can obtain any additional information that may be necessary. The Board also advises individuals filing reports that its responsibilities under the Code are limited to matters covered by the Code. The Code authorizes the Board to investigate complaints, render advisory opinions when requested by Town Officers and supervise the Board does not express opinions or make decisions about whether a particular behavior is ethical in general, only about whether it violates the Town's Code of Ethics.

The Board has recently made efforts to improve public understanding of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the absence of any significant number of complaints requiring investigation by the Board is indicative of a high level of ethical behavior in Town government.

## Requests for Advisory Opinions

The Board of Ethics received one advisory opinion request during the 2020-2021 Fiscal Year. This request was made by an individual whose status as a Town Officer was uncertain and was made with respect to actions taken by another person (who was a Town Officer). After further communications between the individual and the Chair of the Board, the individual withdrew the request for an advisory opinion.

As in prior years, members of the Board individually and the Board as a whole also provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

The Board has adopted a template for a conflict of interest policy that can permit Town Officers to bid on Town contracts without obtaining an advisory opinion from the Board in advance. The Board encourages the Town's various commissions, committees and boards to adopt such a policy. Such a policy can be beneficial in several ways. In addition to permitting them to bid on Town contracts without an advisory opinion, such a policy can give Town Officers greater certainty that they can participate in Town activities in a manner consistent with the Code of Ethics. It is unlikely that an individual observing such a policy would violate the Code. However, if a complaint were received and the Board found that the individual had in good faith followed a policy approved by the Board, it would recommend a change in policy rather than sanctions against the individual.

## Annual Disclosure Statements

*Review of Filings.* As of July 30, 2021, four Town Officers filed annual disclosure reports covering the 2020-2021 Fiscal Year. Three of these were filed online and one was filed with the Town Clerk using the form previously prescribed by the Board. The following chart summarizes the results of a review of these disclosure forms:

	RTM	Town Employees	Appointees	Total
Fully Compliant	2	0	1	3
Not Compliant	<u>0</u>	<u>1</u> *	<u>0</u>	<u>1</u>
<b>Total</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>4</b>

\*This filing was made three days late, but otherwise was compliant.

The use of the new on-line filing system appears to have eliminated the numerous errors in filings that were previously experienced, such as filings with nothing to report, unnotarized filings, incomplete filings, etc.

The number of Town Officers filing reports for the 2020-2021 Fiscal Year is the same as during the 2019-2020 Fiscal Year, although the decline in that year was

presumably due to pandemic related difficulties associated with the previous filing system. Since persons using the new on-line filing system were positive about the format and the experience, the continuation of a low level of filings was surprising to the Board.

While it is possible that there may be no more than a handful of Town Officers that have a financial interest in Town transactions in any given fiscal year, it is also possible that there are others who are unaware of their obligation to file a report or misunderstand the requirement. Except for one report, all of the reporting done this year was by individuals who have previously reported regularly and the nature of the interests they reported is such that it seems possible that other Town Officers may have similar interests. Thus, there may be some Town Officers who remain unaware of the reporting requirement.

The level of reporting is undoubtedly still being impacted somewhat by the current pandemic and the Board remains hopeful that a more user-friendly system will result in improved reporting. It should be expected that the new system will take some time for people to become familiar with it, especially when it became effective less than two weeks before the end of the fiscal year. In light of these considerations, the Board believes that the use of a new system should be seen as an opportunity to raise the level of awareness of about the filing requirement. Training sessions to familiarize Town Officers with the new system will also serve the added purpose of making more of them aware of the requirement and the steps necessary to comply with it.

The Board is continuing to work on the new filing system. Use of an on-line resource carries with it some security risks, which the Board would like to minimize if possible. Additional resources could also be provided to help filers make more accurate and timely filings.

## **Plans and Recommendations**

*Plans.* The Board is anxious to have all Town Officers, as well as the general public, fully understand the who, what, why, when and where of the disclosure process, as well as the other ways in which the provisions of the Code affect them. Toward that end, we will continue to send reminders, prepare reports and maintain current information about the Code and the operations of the Board of Ethics on the Town website during the 2021-2022 Fiscal Year.

The Board will also continue to serve as a resource for information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board stand ready to assist in training Town Officers, which as indicated above may be particularly useful at this time. The Board prefers to help Town Officers gain a better understanding the Code by means other than adjudicating complaints. We will make every effort to respond expeditiously to requests for advisory opinions. Typically, the issues raised in a request by one Town Officer are faced by others, so these opinions can provide useful guidance to others as well as the individuals who request the opinions.

Although the Board has implemented an on-line filing system for the 2020-2021 Fiscal Year in order to implement the recent amendments made to the Code of Ethics, we

are prepared to begin the process of fully implementing the system. We will continue to evaluate the performance of the system implemented this year and work to enhance its effectiveness and security

*Recommendations.* Following a review of its activities and experiences in the 2020-2021 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

**1. Complete the Modernization of the Town's Financial Disclosure Reporting System Authorized by the Recent Amendments to the Code of Ethics.** As discussed above, the Board is pleased that the system implemented for on-line reporting in the 2020-2021 Fiscal Year proved to be useful and convenient for those who filed this year. However, we believe the current format should only be seen as an initial step toward the implementation of a more robust system, particularly since the system it is not as secure as it should be at this point in time. We are prepared to work to improve the security and usefulness of the system so that it can achieve the full effect intended by the recent amendments.

**2. Enhance Training Efforts.** Training is a vital component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to make sure that the requirements of the Code of Ethics and the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to provide training for elected and appointed Town Officers with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements. As indicated above, the implementation of a new reporting system should provide an ideal opportunity to train Town Officers as to both the use of the new system and the reporting and other requirements of the Code of Ethics as well. Members of the Board are available to meet with groups of elected and appointed officials who would like to receive additional information concerning the annual disclosure requirement or provide whatever other assistance may be appropriate.

**3. Establish Safe Harbor Policies.** The Town's purchasing procedures were recently revised to allow Town Officers to submit bids to the Town without first obtaining an advisory opinion from the Board of Ethics. In order for this to be helpful Town Officers, however, the entities that they work with will need to formally adopt a policy that has been approved by the Board. The procedures provided for in this policy will help in identifying potential interest early in the procurement process, before the point at which bids are solicited. There are also often opportunities for violations of the Code to occur subsequent to the submission of a bid as well as in circumstances unrelated to Town procurements. As a result, the adoption of a formal policy to assist in early identification and continuous monitoring of ethical vulnerabilities can be beneficial for most Town entities. The Board will be happy to work with Town entities to implement these safe-harbor procedures. This should encourage talented individuals to provide services to the Town without anxiety about how to deal with potential interests they may have in Town matters by establishing a more predictable and flexible process for all involved.

4. **Increase the Board's Budget for Investigative Expenses.** The Code of Ethics requires the Board to investigate any complaint it receives, but until recently there were no funds budgeted to cover any expenses that might be incurred in conducting such investigations. Under the Board's procedures, and as provided by state law, the Board is required to conduct its preliminary investigations on a confidential basis. Unless the Board has an allocation of funds that are reasonable to cover the possible expenses of such a preliminary investigation, it faces a Hobson's choice of reducing the quality of the investigation by spending less, or compromising the confidentiality of the investigation by requesting additional funds. The Board is pleased to have received an allocation of funds for 2020-2021. As in previous years, these funds proved to be unnecessary and were not be used. However, the amount allocated was less than the amount that the Board considers advisable to ensure that it will be able conduct a proper preliminary investigation should the need arise. Therefore, it continues to feel that a larger set-a-side of funds for this purpose would be appropriate in the coming fiscal years.

The Board invites comments from Town Officers or members of the general public on both its activities and its plans and recommendations. The Board conducts bi-monthly regular meetings on a schedule that is posted on its webpage. Interested persons may request to address the Board at any of these public meetings or may contact any member of the Board personally by calling (888) 432 2777.

**September 18, 2021**

## **Exhibit A**

### **Decision No. 21-01**

**Date:** 09/15/2020

**Topics:** Substantial Financial Interest, Town Action, Sufficiency of a Complaint

**Code Sections:** Section 4 and Section 5

The Board of Ethics received a report concerning the activities of one of the Selectmen in connection with the actions considered and taken by the Town with regard to refuse removal. Under its Statement of Procedures, the Board proceeded with a confidential investigation to determine if there was probable cause that a violation of the Code had occurred.

The first step in any such investigation is for the Board to determine whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. The Board must then evaluate whether the report describes a specific violation of the Code by the Town Officer or Town Officers involved. In performing this preliminary review, the Board considers only the allegations contained in the report and assumes the truth and completeness of these allegations without further investigation. After this evaluation, the Board makes a finding as to whether the submission makes a complaint that should be further investigated or whether the submission should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction.

### **STATEMENT OF FACTS**

The report submitted to the Board expressed concern about “the radical change to the Town’s waste removal policies.” It alleged that the respondent had supported a plan that would “require residents to purchase special garbage bags from specific trash disposal companies (Pay as You Throw).” The report indicated that this seemed to be a conflict of interest “since I’ve been told” that the respondent’s family “is in that very same business, and would profit from the plan.” The report concluded that: “Since nobody has asked the question, I’d like to know if such a conflict exists,” and asked if the respondent had filed “the necessary declarations with the legal department.”

Although the report did not contain specifics as to how the respondent had attempted to influence the process, it indicated that it was a complaint under Section 4 of the Code, which prohibits attempting to influence “Town actions” in which a Town

Officer has a financial interest. If the Selectman's family would profit from the Town action, Section 4 of the Code would prohibit attempting to influence the action. Therefore, the Board considered it appropriate to obtain additional information before making a final decision as to whether the report met the requirements for a complaint under the Code of Ethics.

Both the complainant and the respondent agreed to cooperate and to appear before the Board in executive session at its next regular meeting. At the meeting, the complainant was asked to provide any additional information that would show how the respondent or the respondent's family would "profit from" any of the recent plans that had been considered or implemented by the Town with regard to refuse disposal services. Complainant said that he was not aware of any specific situation, but had heard many rumors. The report had been submitted, complainant said, because the "optics" were not good, since the respondent and respondent's family had been previously associated with the refuse disposal business and one of the first initiatives that respondent had been associated with as a Town Officer involved that business.

Respondent acknowledged being associated with the refuse hauling business many years ago and indicated that respondent was the last family member associated with the business when the remaining operations were sold in 2002. Respondent had also been involved with a local recycling company until 2011, although employed at that time as a full time teacher. Thus, for many years, neither respondent nor any family member has been involved in the refuse business. Nor have they had any financial interest in any company that would have provided bags under the "pay-as-you-throw" plan. However, respondent was aware that Greenwich is unique among surrounding municipalities in not charging a tipping fee to waste haulers. Whatever the reason, the quantity of refuse generated by the community is high and the question of how to best manage the process and fairly allocate the cost was an issue that the respondent felt was important to address.


Initially, respondent had considered a "pay-as-you-throw" system to have advantages because it would allocate cost based on the quantity of refuse produced at the source and could encourage conservation. Local refuse haulers had not been receptive to the idea, however, because they believed it was unduly cumbersome. In addition, it appeared that there was only one source for the bags necessary to support the system. As a result, the respondent ultimately came to support a system that charged residents an annual fee to use the Town facility and charged a tipping fee to the haulers. This system has been adopted and respondent indicated that it appears to be working well, although some residents have been disappointed with increases in their service fees as a result of haulers passing through the cost of the tipping fee to their customers.

After respondent provided this information, the Board asked the complainant if there was any other information that complainant wished to provide as to a specific violation of the Code by the respondent. Although complainant continued to feel that the "optics did not look good," complainant agreed that there was no reason why the Board should not dismiss the complaint.



## **FINDINGS**

The Board has carefully reviewed the complainant's report and made inquiries with both the complainant and respondent regarding the circumstances. Based on this review, the Board has determined that the report should be dismissed, since it does not allege facts supporting the conclusion that a violation of the Code of Ethics has occurred. Accordingly, the report did not qualify as a complaint that should be investigated under the Code.



## Decision No. 21-02

**Date:** 5/11/2021

**Topics:** Complaints-Sufficiency, Board of Assessment Appeals, Financial Interests

**Code Sections:** Section 4, Section 8

The Board of Ethics received a report complaining of a possible violation of the Code of Ethics in connection with a decision made by a member of the Board of Assessment Appeals. The report indicated that the Board member had accepted the task of reviewing an appeal involving the complainant and made a decision with respect to the appeal against the complainant even though the respondent had been recently involved in an arbitration matter with the complainant.

Under its Statement of Procedures, the Board proceeded with a confidential investigation to determine if there was probable cause that a violation of the Code had occurred. The first step in any such investigation is for the Board to evaluate whether the submission alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the allegations contained in the submission and assumes the truth and completeness of these allegations without further investigation. After this evaluation, the Board makes a finding as to whether the report states a complaint that should be further investigated or whether it should be dismissed because it fails to allege a specific violation of the Code over which the Board has appropriate jurisdiction.

The report was received on April 6<sup>th</sup> and a hearing in executive session was scheduled to review the report on May 11<sup>th</sup>. Prior to the hearing, a member of the Board requested additional information from the complainant concerning the financial interest of the respondent in the matter involved in the appeal. The complainant then requested to withdraw the report.

At the hearing, the Board determined that the respondent was a Town Officer within the meaning of the Code. It also determined that the allegations purported to involve a possible violation of Section 4 of the Code of Ethics. However, it determined that the submission did not allege facts supporting the conclusion that a violation of the Code existed. The Board made this determination because the report contained no allegation that the respondent had a personal financial interest in the decision to deny the appeal of the assessment.

Accordingly, the Board determined to dismiss the report since it did not allege facts sufficient to qualify as a complaint that should be investigated under the Code.